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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1954

No. 164

PHILIP ANDREW WITMER, PETITIONER,

vs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 24, 1954

CERTIORARI GRANTED OCTOBER 14, 1954

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DOCKET ENTRIES

1952

Mar. 20 Indictment: Vio. 50 USCA 451; 462 "Selective Service Act of 1948"; and Proclamation of the President and Selective Service Regulations. in 1 ct.
A True Bill.
JS 2 (00-3).

Mar. 25 Plea: Not guilty.

Mar. 25 Clerk's Minute Sheet of arraignment.

Mar. 27 Jury called to box, and sworn. (See List).

Mar. 27 Clerk's Minute Sheet of Trial. (1/2 day).

Mar. 31 Clerk's Minute Sheet of Trial. (1/2 day).

Mar. 31 Verdict: Guilty.

Apr. 3 Motion for Judgment of Acquittal.

Apr. 3 Copy of letter fixing hearing on motion Apr. 22, 1952, at 11 AM.

Nov. 6 Transcript of Trial on March 27 & 31, 1952. In
Nov. 6 Envelope containing exhibits. Vault.

Dec. 17 Order fixing argument on motion for judgment of acquittal at Scranton, Pa. Tues. Jan. 13, 1953, at 11 A.M. (M).

Dec. 17 Certified copy order mailed counsel of record; also US Attorney.

1953

Jan. 13 Clerk's Minutes Sheet at hearing—argument for Judgment of Acquittal and Motion to Amend Motion for Judgment of Acquittal.

Sept. 25 Opinion denying motion for judgment of acquittal, and Order. (M) Copies of Opinion and Order mailed to counsel of record, and to the Attorney General.

Docket Entries

Oct. 12 Sentence: Imprisonment for a period of Three Years. (M).

Oct. 12 2 Certified copies judgment & commitment handed US Marshal and 1 cc. to US Attorney and 1 cc to Probation Officer.

Oct. 12 Clerk's Minute Sheet re: Sentencing.

Oct. 12 Order denying defendant's oral motion to be admitted to bail pending appeal. (M).

Oct. 12 Certified copies of Order handed to Darlington Hoopes Esq., counsel for defendant, and to US Attorney.

Oct. 12 Notice of Appeal filed in duplicate.

Oct. 13 Letter to Mrs. Ida O. Creskoff, Clerk, US Court of Appeals for Third Circuit, Phil. Pa. enclosing copy of Notice of Appeal and Statement of Docket Entries, Cr. Form No. 27; and copy of letter mailed to US Atty. Scranton, Pa. JS 3-(OT-3).

Oct. 14 Record on Appeal No. 1 to 17 inc. together with Clerk's Certificate mailed Clerk, U. S. Court of Appeals, for the Third Circuit, Philadelphia, Pa.

Oct. 16 Receipt of Clerk U. S. Ct. of Appeals for Record on Appeal above.

Oct. 20 Order, U. S. Court of Appeals, admitting Appellant to bail, pending Appeal, in the sum of $1,000.00. (Maris) (dated 10/19/53).

Oct. 20 Court Appearance Bond in the sum of $1,000.00 with John S. & Ruth C. Johnston, Molington RD1, Brecknock Twp., Berks County, Pa., as surety.

Oct. 20 U. S. Marshal's return of Order, Court of Appeals, executed by producing Deft. before U. S. Comm. Kolb when Deft. furnished bail in the sum of $1,000.00 (MF&E $2.00).

INDICTMENT

The Grand Jury Charges:

On or about the 5th day of December, 1951, in the Middle District of Pennsylvania,

PHILIP ANDREW WITMER,

UNLAWFULLY, KNOWINGLY AND WILFULLY FAILED, neglected and refused to submit to induction into the Armed Forces of the United States as required of him by the Selective Service Act of 1948, 50 U. S. C. A. Appendix 451-470, a Proclamation of the President of the United States, issued and promulgated thereunder July 20, 1948, #2799, 50 U. S. C. A. 453 note, and Selective Service Regulations duly issued pursuant to said Act and then in full force and effect, all as the defendant then and there well knew.

A TRUE BILL

/s/ O. E. McGREGOR,
Foreman

March 20, 1952

/s/ ARTHUR A. MAGUIRE,
United States Attorney.

TRANSCRIPT OF TESTIMONY

BEFORE: Honorable JOHN W. MURPHY, United States District Judge, and a jury at Scranton, Pa., on March 27 and March 31, 1952.

* * *

[Tr. 7]

MRS. LEONORE MOYER, called and sworn on behalf of the Government, on direct and cross-examination, testified as follows:

* * *

REDIRECT EXAMINATION

[Tr. 19]

BY THE COURT:

Now then this notation you say "Board met with registrant. No action taken (see file)." Where is that? That is on the back of the file, the file cover?

BY THE WITNESS:

That is correct.

* * *

[Tr. 20]

BY THE WITNESS:

On the bottom of that page. They told him his appeal would be sent to the appeal board.

BY THE COURT:

"This Board felt this was not sufficient evidence to warrant a 4-D Classification and informed the registrant his case would be sent up to the appeal board following his physical examination." You mean that sentence, do you?

BY THE WITNESS:

That is correct.

* * *

[Tr. 22]

BY THE WITNESS:

It shows the name of the registrant, his Selective Service Number, what classification the registrant is in, the

date he was classified, forwarded to the appeal board on appeal taken by, then the name of the person or the employer, and the date forwarded to the appeal board.

* * *

[Tr. 24]

REDIRECT EXAMINATION

By Mr. Kalp:

Q You testified on cross-examination there is a notation on the back of the questionnaire that he was given a hearing on the 19th and that no action was taken, will you read that?

A "3-19-51 Board met with registrant. No action taken (see note in file)," which referred to the note.

* * *

Q What happened after he—did the Board notify the defendant orally that his classification would not be changed at that time?

A At the end of the Board meeting the registrant was apprised that his 1-A classification would remain the same, his file would be forwarded to the appeal board upon the completion

* * *

[Tr. 26]

By the Court:

Are you certain that the Board said to this young man, as you have testified in answer to Government counsel's question, that someone there apprised—by that I assume you mean advised or informed—the young man that his 1-A classification would remain the same?

By the Witness:

Our Board chairman.

By the Court:

He said that?

Mrs. Leonore Moyer, redirect (Gov't)

BY THE WITNESS:

Yes.

* * *

[Tr. 27]

RECROSS-EXAMINATION

BY MR. HOOPES:

* * *

A Mr. Hoopes, when our Board does not reclassify or classify immediately a registrant who is 1-A at a personal appearance they will tell them at that time they will remain 1-A.

Q You are testifying now because that is the practice of your Board to do that in every case?

A Mr. Haessler, our Board Chairman, does that.

Q That is your regular practice?

A That is correct.

* * *

[Tr. 28]

A. To the best of my knowledge, it was told to Mr. Witmer.

Q Isn't it a fact that at that time Mr. Witmer was told the matter was out of the hands of the local board because he had taken an appeal?

A That is correct.

Q In other words, the local board could not do anything at that time because he had taken an appeal, isn't that what you told him or what the board chairman told him?

A Yes sir, that is correct.

BY THE COURT:

Now you said they told him that. Did they tell him what you said before? You say now they told him they could not take any action because it was on appeal, and you have already told us that they told him that his classification 1-A would remain unchanged?

By the Witness:

That is correct, sir.

* * *

By the Witness:

They told the man his 1-A classification would remain the same, which was 1-A.

* * *

[Tr. 29]

By the Witness:

It seems to me the two statements are not necessarily inconsistent. The local board may have said they would classify him in 1-A because the matter was out of their hands and they couldn't change it.

By the Court:

I want to know why. I want to get the truth of what happened. You have said the local board said they could do nothing because it was out of their hands; you have also said the local board said—the chairman told you—"The board felt this was not sufficient evidence to warrant a 4-D classification and informed the registrant his case would be sent up to the appeal board following his physical examination." Did the chairman say that—that you typed?

By the Witness:

Yes. That was dictated by the chairman.

* * *

[Tr. 37]

By Mr. Hoopes:

* * *

I submit that under the testimony in this case the local board did not classify this registrant anew after he appeared before it personally. They did not mail him the classification, notice of classification, SS Form 110, as required by Paragraph (d), and they thereby denied him the right of appeal from that classification which is set forth in Paragraph (e). And, of course, under Section 1624.3 they had no right to induct him until 10 days after that

notice of classification had been mailed to him as required by Section 1624.2, Sub-Paragraph (d).

* * *

[Tr. 39]

By the Court:

The young lady said it was going to remain the same as it had been and that his appeal would be honored. You say that he would have an appeal from the classification immediately and that they should write him a letter and say "We reclassify you 1-A as you have been heretofore," and then he would have ten days from the day he got the letter?

* * *

[Tr. 40]

By the Court:

Judge Parker, who is a very able Judge, refers to Judge Maris' opinion, and, notwithstanding Judge Maris' opinion, he said that since there was oral notice that the young man was notified and since he had a right to go up with the appeal record, since he could add anything to it he desired by way of statement, said Judge Parker, he is not convinced that Judge Maris' opinion on this proposition where the board gave notice is the law.

* * *

By the Court:

[Tr. 41]

The Fourth Circuit has gone much beyond the Third Circuit historically in protecting these conscientious objectors, and it was the Fourth Circuit doctrine in favor of Jehovah's Witnesses and conscientious objectors that was adopted and followed by the Supreme Court, and the Third Circuit was not nearly as advanced as the Fourth. Now we have the Fourth that was away ahead of the Third, and you say—

* * *

[Tr. 58]

MRS. LEONORE MOYER, recalled.

RECROSS-EXAMINATION (*Cont.*)

BY MR. HOOPES:

* * *

[Tr. 60]

Q Then did the board members ask Mr. Witmer questions about his classification?

A To the best of my knowledge, yes.

Q He answered them?

A He did.

Q That went on for quite a while?

A If I remember correctly, the interview wasn't too long.

Q When you say, "The interview wasn't too long," can you give me an estimate of how long you think it was?

A I would say between fifteen minutes and one-half hour.

Q Well at that time after this questioning had gone on for sometime, did Mr. Witmer on his own personal account present to the board chairman three articles, one, an affidavit, two, a three-page single-spaced typewritten statement signed by himself, and

[Tr. 61]

third, a copy of the *Watchtower* magazine of February 1, 1951?

A Information was presented at the time of the hearing and the interview.

* * *

Q And Mr. Witmer at that time called the attention of the board to an article entitled "Pacifism and Conscientious Objection—Is There a Difference? in that particular copy of the *Watchtower* magazine; you have a copy there. do you not?

Q Yes, that article is in here.

Mrs. Leonore Moyer, recross (Gov't)

* * *

[Tr. 62]

Q Perhaps I can refresh your recollection. It was right after that the board chairmain said, "We can't change your classification, the matter is out of our hands because you have taken an appeal," wasn't it?

A That is correct.

* * *

[Tr. 63]

Q Isn't it also a fact that at that time they agreed that because of his appeal, the matter was out of their hands and they couldn't change his classification?

A That I don't remember.

* * *

Q As soon as the hearing was over, the board chairman made the statement which I quoted twice and which you said is absolutely correct now that "We can't change your classification, the matter is out of our hands because you have taken an appeal?"

A That is correct.

Q They didn't ask Mr. Witmer to step outside while they considered his case?

A No.

* * *

[Tr. 64]

Q Who dictated that entry to you?

A The board chairman, Mr. Charles Haessler.

Q You have also testified that he also dictated to you that document which you have called a "note in file"?

A The summary of the board meeting, that is correct.

* * *

REDIRECT EXAMINATION

By Mr. Maguire:

[Tr. 71]

Q And do you—to clear this up—when was the classification mailed to this young man?

A 2-22-51.

Q 2-22-51. Now within ten days do your records disclose that you received any written communication from this young man?

A They do, sir.

Q Within ten days?

[Tr. 72]

A No, there is an expiration of more than ten days.

Q I will ask the question once again. Do your records disclose that you received any communication from this young man within ten days of your mailing his classification?

A No sir.

Q When is the next notation of receiving anything from this young man?

A March 5, 1951.

Q And that was over ten days from the date of mailing his notice of classification, was it not?

A Correct.

* * *

[Tr. 73]

Q Now, Mrs. Moyer, did this young man ask for a personal appearance within ten days of the mailing of his notice of classification?

A Not within ten days of the receipt of the notice of classification.

Q I think the regulations state that within ten days of the mailing of the notice?

A That is correct, sir.

Q Well, you know when the notice was mailed don't you?

A 2-22-51.

Q Now within ten days after that letter, did you receive any request for a personal appearance?

A No sir.

Q However, in this notice of appeal, which was stamped

by your board and you, it was received on March 5, out of time; he did ask for an appearance, did he not?

A He did, sir.

* * *

RECROSS-EXAMINATION

By Mr. Hoopes:

* * *

[Tr. 74]

Q So that if this communication had arrived at your office on Saturday, March 3, you would not have gotten it until March 5?

A That is correct, sir.

Q And you would have dated it received though as March 5?

A That is right.

Q So that when you say it was not received within ten days, what you mean to say is that you didn't mark it received within ten days?

A I didn't receive it until March 5.

Q You didn't receive it until March 5 personally, but you don't know when it arrived at your office?

A No sir.

Q It may have arrived there on March 3?

A It may have.

* * *

[Tr. 76]

By the Court:

Now then the young man, at any rate, wrote you a letter dated March 1, which you say you stamped with your Board's stamp March 5. In that letter he said: "On the strength of my right to appeal my service classification I wish to state that I am a minister of the gospel. On the strength of this fact I wish to appeal this classification and request a personal appearance to present evidence to this fact." Now then you received that. Was this letter a part

of the file, this letter marked "Government's Exhibit No. 'A,'" was this letter a part of the file when the record was sent to the appeal board?

BY THE WITNESS:

Yes sir.

• • •

[Tr. 77]

BY THE COURT:

Now on examination by Mr. Hoopes, you have said that the board said, "We can't change your classification, the matter is out of our hands, you have taken an appeal," and did the board consider it in this opinion where "the board felt this was not sufficient evidence to warrant a 4-D classification and informed the registrant his case would be sent up to the appeal board following his physical examination"—wasn't that before the appeal board?

BY THE WITNESS:

That was.

BY THE COURT:

In view of that, do you say the board said, "We can't

[Tr. 78]

change your classification, it is out of our hands, you have taken an appeal?"

BY THE WITNESS:

Yes.

BY THE COURT:

You mean they did say that and they said this?

BY THE WITNESS:

That was dictated by the board chairman.

• • •

BY MR. HOOPES:

I have to object to this examination of the Government witness by the Court.

BY THE COURT:

I want to say, sir, that this is not a matter for the jury, it is a matter for the Court to decide whether or not there

has been a proper hearing by this board. Do you say that is a question of fact for the jury?

[Tr. 79]

BY MR. HOOPES:

I didn't say that. I am raising an objection so it may be on the record. I object. I object to cross-examining the Government's witness by the Court after she has testified in answer to my question.

BY THE COURT:

In answer to a leading question.

BY MR. HOOPES:

On cross-examination I have a right to ask leading questions.

BY THE COURT:

Yes, you have. It was a leading question. I want to know precisely what happened so that I can find out if your client got his rights before that board. If he didn't, it is my duty to so find, but I want the facts.

BY MR. HOOPES:

I want the facts. I want my objection on the record.

BY THE COURT:

You have your objection on the record, and you are perfectly right in taking it. You feel that way; take it.

* * *

[Tr. 89]

BY MR. HOOPES:

I think I must at this time renew my motion for a judgment of acquittal for the same reasons which I have already stated.

BY THE COURT:

That is right.

And now that your motion has been renewed, and applying the same test in this new situation, the motion is denied.

You may proceed with your closing if you desire to close.

Statement by Court

* * *

[Tr. 93]

BY THE COURT:

Now then, for the record, the case was started on Thursday. The young lady from the draft board was late arriving, and we waited then for her arrival. Mr. Kalp of the United States Attorney's Office, who had carried the laboring oar, was already assigned to appear before Judge Follmer at Harrisburg on Friday morning, and the Court had already committed itself to attend the One Hundreth Anniversary of the University of Pennsylvania Law Review in Philadelphia on Friday. So that put the hearing over from Thursday, the case not having been concluded, to Monday morning. There was a misunderstanding. Notwithstanding ten of the jurors appeared, there was a misunderstanding on the part of two of them, and they appeared at 2:00 o'clock, and we proceeded to try it from that time on. That accounts for any "dragging out" counsel might refer to.

As to the question of whether or not it is a question of law or fact, we will be glad to hear any argument counsel sees fit to make on the question.

As to what should go before the jury, as we understand

[Tr. 94]

it, the Court is obliged to pass upon whether or not the hearing as such shows any lack of due process, and we have a paper here which we propose to instruct the jury on—what I propose reading to the jury.

"From an examination of the Selective Service file and appeal board record of the registrant-defendant, the Court finds that there is evidence in the record to support the classification arrived at by the Selective Service authorities.

"The Court further finds from an examination of the Selective Service file and appeal board record that the classification of the registrant-defendant by the Selective Serv-

ice authorities was not illegal, arbitrary or capricious."

We will instruct the jury on that, and we will proceed on what we think is the theory of those cases.

There was a conflict apparently along the line. Some courts held that you had to have substantial evidence. Others say that all the Court had to do was to find that they had a hearing, and there was an in-between. Is there evidence? That seems to be the test. We are bound by it, at least, so the Supreme Court says.

And there is evidence here, the young lady says one thing, the files say another. The files are there, and they show the young man's—I mean the summary exhibits and the letter he offered and went on up on. If there is evidence there, as we understand it, upon which they passed as in Cox and Estep, we stop, unless we find that it is arbitrary, [Tr. 95]
capricious or illegal.

* * *

EXHIBITS

[Immaterial portions are omitted in printing. Handwritten or typewritten material is distinguished from the wording of the printed form by *italics*.]

SELECTIVE SERVICE SYSTEM
CLASSIFICATION QUESTIONNAIRE

JAN 31 1951
[Local Board Stamp]
Selective Service No. *36 28 30 71*
Date of mailing *JAN 23 1951*
Date of birth: (Month) *Feb.* (Day) *7* (Year) *1930*
Name: (Last) *Witmer* (First) *Philip* (Middle) *Andrew*
Address: (Number and street or R. F. D. route) *R. D. #1*

Classification Questionnaire

(City, town, or village) *Reinholds* (Zone) (County) *Berks* (State) *Pa.*
Local Board No. 28
Colonial Trust Building
447-449 Penn Street
Reading, Pa.
(Stamp of Local Board)

Notice to Registrant

• • •

This questionnaire must be returned on or before *FEB 2 1951*

Leonore Rhoda
Clerk of Local Board.

• • •

SSS Form No. 100

[Page 2]

• • •

Statements of the Registrant
Series I.—Identification

• • •

1. My name is (print) (Last) *Witmer* (First) *Philip* (Middle) *Andrew*

• • •

5. My Social Security number is *197-24-3873* . . .

Series II.—Present Members of Armed Forces

• • •

Does not apply.

• • •

[Page 3]

• • •

Series III.—Prior Military Service

• • •

Series IV.—Officials Deferred by Law

• • •

Series V.—Sole Surviving Son

Exhibits: Defendant's Selective Service File

* * *

Series VI.–Minister, or Student Preparing for the Ministry

* * *

Does not apply.

* * *

[Page 4]

Series VII.—Family Status and Dependents

* * *

Series VIII.—Present Occupation

1. Every registrant must check each of the following boxes appropriate to his case and follow the instructions indicated.

* * *

(b) I am now working in a nonagricultural occupation. *X*

* * *

2. The job I am now working at is . . . *Multiroller in a Hat Factory.*

3 I do the following kind of work in my present job . . . *Turn Hats by hand*

4. In my present job, I am . . . [left blank]; I have worked *3* years in my present trade, and I (do, do not) *do not* expect to continue indefinitely in it. . . .

[Note added in right margin:]
Works in Hat Factory

5. My employer is *Geo. W. Ballmay Inc. . . . Adamstown Pa. . . . whose business is Hat Manufacturer . . .*

6. (a) I was employed by present employer on (Date) *Jan. 26, 1948*

(b) I entered job described in Statements 2 and 3, this series, on (Date) *Jan. 26, 1948*

[Page 5]

(c) I am paid at the rate of *$0.92* per hour *X* . . .

(d) I work an average of *40* hours per week.

7. Other business or work in which I am now engaged is *operating farms* . . .

8. Prior work experience *have been working on farm*

since youth knew nothing of work in Hat Factory until Jan. 26, 1948

* * *

Series IX.—Agricultural Occupation

* * *

1. I work on or operate a farm, orchard, or ranch as . . .

(a) Sole owner-operator of the farm *X* . . .

(d) Cash tenant or renter *X* . . .

My agreement with (Name of landlord) *Ralph Kline* expires (Month) *Oct.* (Day) *1* (Year) *1951* (Name and address of employer) *Ralph Kline, R. #1 Reinholds, Pa.*

2. I have been engaged in farm work continuously since (Date) *Youth*

3. I (do, do not) *do* live on the farm where I work.

4. I (am, am not) *am* actually and personally responsible for the operation of the farm where I work.

5. The principal crops and livestock of the farm I operate or work on are:

Names of Crops	Acres Devoted to Each
1951	
wheat	*8*
oats	*4*
corn	*18*
Hay	*10*
Vegtables	*2*
Kinds of Livestock	**Number of Each Now on Farm**
Cows	*1*
Young Stock	*6*
Brood Sow	*1*
Feeder Pigs	*4*
Laying Hens	*25*

6. Total value of products sold from this farm during the last crop year *$1200.00*

7. Principal products marketed during the last two years *Beef & Pork*

8. The number of year-round workers on this farm is (Number) *1* of whom (Number) *none* are hired hands.

* * *

11. Other business or work in which I am now engaged (Nature of business; if none, write "None") *Multiroller in Hat Factory*

* * *

[Page 6]

Series X.—Education

1. I have completed *8* years of elementary school . . .

Series XI.—Students

* * *

Series XII.—Citizenship

* * *

Series XIII.—Court Record

* * *

[Page 7]

Series XIV.—Conscientious Objection to War

* * *

By reason of religious training and belief I am conscientiously opposed to participation in war in any form and for this reason hereby request that the local board furnish me a Special Form for Conscientious Objector (SSS Form No. 150) which I am to complete and return to the local board for its consideration.

(Signature) *Philip Andrew Witmer*

Series XV.—Physical Condition

* * *

Registrant's Statement Regarding Classification

* * *

Registrant's Certificate

* * *

I, *Philip Andrew Witmer*, certify that I am the registrant named and described in the foregoing statements in this questionnaire; that I have read (or have had read to me) the statements made by and about me, and that each and

every such statement is true and complete to the best of my knowledge, information, and belief. The statements made by me in the foregoing (are, are not) *are not* in my own handwriting.

(Signature or mark of registrant) *Philip Andrew Witmer*

• • •

[Page 8]

Dates	Minutes of Action by Local Board and Appeal Board	Vote Yes	Vote No
1-31-51	*Form 150 sent*		
2-21-51	*Classified 1-A. Form 110 sent 2-22-51*		
3-19-51	*Board met with registrant. No action taken (see note in file)*		
MAR 28 1951	*SSS Form 223 MAILED*		
4-11-51	*Form 62 sent. Accepted*		
4-24-51	*Forwarded to U. S. Atty., Eastern Dist. of Pa., in accordance with Section 1626.25. The Appeal Board reviewed the file and determined that the registrant should not be classified in either Class 1-A-O or Class IV-E under the circumstances set forth in subparagraphs (2) or (4) of paragraph (a) of this section.* *W. LeRoy McKinley*		
11-6-51	*File received from Appeal Board. Classified 1-A by 4 to 0 vote. Form 110 sent registrant.*		
11-21-51	*SSS Form 252 sent*		
12-10-51	*Induction Station advised today registrant refused Induction into Armed Services. Reported to U. S. D. A. on Form 301*		

Exhibits: Defendant's Selective Service File

#1 Reinholds, Pa.
January 30, 1951

Local Board #28
Colonial Trust Building
Fifth & Penn Streets
Reading, Pennsylvania
Gentlemen:

[Note inserted in margin:]
Works in Hat Factory

Re: Selective Service #30-71

Attached hereto you will find selective service questionnaire. Please note that in addition to being employed as a multiroller in a hat factory owned and operated by George W. Bollman, Inc., Adamstown, Pennsylvania I also operate my father's farm (Myers Witmer) consisting of 116 acres, 30 of which is under cultivation at this time. In 1951 the following was under cultivation:

Corn	4	Acres
Oats	3	"
Soy Beans	2	"

At the present time I have the following livestock:

JAN 31 1951
[Local Board Stamp]

Milk Cows	1
Heifers	2
Calfs	4
Brood Sows	1
Feeder Pigs	4
Laying Hens	25

It is my ambition to increase the cultivated land on this farm and have rented an additional 25 acres from a neighbor, 8 acres of this I have seeded to wheat for 1951 harvest. I intend to put more land into cultivation in 1951 and also increase the livestock. This work I am doing during hours that I am not employed at the hat factory. The reason I

am employed in a hat factory is to accumulate some money to buy some additional machinery and livestock. I own a tractor which I purchased three years ago, and in addition to using it on my own land I also do custom work for neighbors. It is my ambition to become a farmer and devote all my time to farming. For this reason I am appealing to you to grant me an agricultural classification as I assure you that I will increase production year after year, and contribute a satisfactory amount for the war effort and civilian use.

Yours truly,
Philip Andrew Witmer
Philip Andrew Witmer

SELECTIVE SERVICE SYSTEM
SPECIAL FORM FOR CONSCIENTIOUS OBJECTOR

Selective Service No. *36 28 30 71*
Name: (Last) *Witmer* (First) *Philip* (Middle) *Andrew*
Address . . . *R.D. #1. . . . Reinholds . . . Penna.*
[Local Board Stamp]

This form must be returned on or before *February 5, 1951*

• • •

Series I.—Claim for Exemption

• • •

FEB 5 1951
[Local Board Stamp]
[Statements A and B left blank]

Series II.--Religious Training and Beliefs

• • •

1. Do you believe in a Supreme Being? Yes *X*

2. Describe the nature of your belief which is the basis of your claim made in Series I above, and state whether or not your belief in a supreme being involves duties which to you are superior to those arising from any human relation.

I am absolutely netral toward the political disputes and the international conorversies and combats of this world. I take no active or violent part for either side, but pay my vows to God and always advocate his kingdom and way of salvation.

[Page 2]

3. Explain how, when, and from whom or from what source you received the training and acquired the belief which is the basis of your claim made in Series I above.

In my youth I was instructed by my parents in the study of the Bible. In the year 1942 I myself began to study the Bible with aid of the Watchtower.

4. Give the name and present address of the individual upon whom you rely most for religious guidance.

Richard Palms 128 Robeson St. Reading

5. Under what circumstances, if any, do you believe in the use of force?

I believe in the use of force only at the command of Almighty God.

6. Describe the actions and behavior in your life which in your opinion most conspicuously demonstrate the consistency and depth of your religious convictions.

By reason of the study of the Bible I have tried to tell others about God's Kingdom, and of how he will put a stop to all wars.

7. Have you ever given public expression, written or oral, to the views herein expressed as the basis for your claim made in Series I above? If so, specify when and where.

No.

Series III.—General Background

* * *

1. Give the name and address of each school and college which you have attended, together with the dates of your attendance; and state in each instance the type of school (church, military, commercial, etc.).

Special Form for Conscientious Objector

Name of School	Type of School	Location of School	Dates Attended From–	To–
Trostle	*Grade*	*Brecknock Township*	1938	1946

* * *

2. Give a chronological list of all occupations, positions, jobs, or types of work, other than as a student in school or college, in which you have at any time been engaged, whether for monetary compensation or not, giving the facts indicated below with regard to each position or job held, or type of work in which engaged.

Type of Work	Name of Employer	Address of Employer	Period Worked From–	To–
Make hats	*George W. Ballman*	*Adamstown, Pa.*	1948	1951
Part time farming	*Self*		1948	1951
Witnessing from door to door			1948	1951

3. Give all addresses and dates of residence where you have formerly lived.

* * *

None

4. Give the name and address of your parents and indicate whether they are living or not.

Myers G. Witmer Reinholds R. F. D. #1 living
Clara Witmer Reinholds R. F. D. #1 living

5. (a) State the religious denomination or sect of your father *Jehovah's Witnesses*

(b) State the religious denomination or sect of your mother *Jehovah's Witnesses*

Series IV.—Participation in Organizations

1. Have you ever been a member of any military organization or establishment? If so, state the name and address of same and give reasons why you became a member.

No.

2. Are you a member of a religious sect or organiza-

tion? (Yes or no) *Yes* . . .

(a) State the name of the sect, and the name and location of its governing body or head if known to you.

Jehovah's Witnesses, Watchtower Bible and Tract Society, Inc. Brooklyn, N. Y.

(b) When, where, and how, did you become a member of said sect or organization?

I was always in this belief

(c) State the name and location of the church, congregation, or meeting where you customarily attend.

Kingdom Hall, 12 N. 4th St. Reading Pa.

(d) Give the name, title, and present address of the pastor or leader of such church, congregation, or meeting.

Richard Palms 128 Robeson St. Reading Pa.

(e) Describe carefully the creed or official statements of said religious sect or organization in relation to participation in war.

Find enclosed the Feb. 1 Watchtower for the answer to this question

3. Describe your relationships with and activities in all organizations with which you are or have been affiliated, other than military, political, or labor organizations.

I am one of Jehovah's Witnesses

[Page 4]

Series V.—References

Give here the names and other information indicated concerning persons who could supply information as to the sincerity of your professed convictions against participation in war.

Name	Full address	Occupation or Position	Relationship to You
Richard Palms	*128 Robeson Reading*	*minister*	*none*
Earl Adams	*1602 Crowder Ave. Reading*	"	"
Elmer Palm	*217 Hudson Reading*	"	"
John S. Johnston	*Mohnton, R. D. #2*	"	"

Special Form for Conscientious Objector

Registrant's Certificate

* * *

I, *Philip Andrew Witmer,* certify that I am the registrant named and described in the foregoing statements in this questionnaire; that I have read (or have had read to me) the statements made by and about me, and that each and every such statement is true and complete to the best of my knowledge, information, and belief. The statements made by me in the foregoing (are, are not) *are* in my own handwriting.

(Signature or mark of registrant) *Philip Andrew Witmer*

* * *

My training and belief in relation to a Supreme Being involves duties superior to those arising from any human relation. This prevents me from turning aside from those superior duties which I owe to a superior Being.

Philip A. Witmer

for section 1 (B)
Page 1

[Marked Government's Exhibit "A"]

Answered 3-15-51 for appearance at 2 P. M. on 3-19-51.
LCR, Clerk

Philip A. Witmer
c #36-28-30-71
Reinholds, Pa. R #1
March 1, 1951

Local Board #28
Colonial Trust Building
447-449 Penn St.
Reading, Pa.
Local Board #28
Sirs:

On the *strenght* of my right to appeal my service classi-

fication I wish to state that I am a minister of the gospel.

On the *strenght* of this fact I wish to appeal this *classifation* and request a personal appearance to present evidence to this fact.

Respectfully
Philip A. Witmer

MAR 5 1951
[Local Board Stamp]

MAR 19 1951
[Local Board Stamp]

Reading, Pa.
March 17, 1951

To Whom It May Concern:

This is to certify that Philip Witmer of R. D. #1, Rheinholds, Pa. is personally known to me as being a student of the Bible who *relys* upon the publications of the Watchtower Bible & Tract Society of Brooklyn, N. Y. for guidance in the study of the Scriptures as these apply to the fulfillment of the prophecies of God's word.

Mr. Witmer has been guided and encouraged in the study of the Bible by his parents since he was able to understand and appreciate the very important information contained in the scriptures inspired of Jehovah God.

Since the year 1942 Mr. Witmer has on many occasions engaged in the preaching of the good news or gospel to others which proclamation was commanded by Christ Jesus and which preaching activity is mandatory upon those whose lives are devoted to the doing of Jehovah God's will. Reports of Mr. Witmer's ministry activity have been received by me and a record *kepts* so that documentary evidence of his preaching is available.

Richard B. Palms
City Servant, Reading Pa.
Company of Jehovah's Witnesses

Affidavit of Richard B. Palms, March 17, 1951

Sworn to and subscribed before me
this 17th day of March 1951
P. G. Schmidt
P. O. Box 1413
Reading, Pa.
Notary Public
My Commission Expires 2-21-53

Statement

I, Philip Andrew Witmer, Selective Service No. 36-28-30-71 was born at Reinholds, R. F. D. #1, Berks County, Brecknick Township, Pennsylvania on February 7, 1930. From the beginning my parents taught me about the Bible with the help of the Watchtower publications. For many years I attended Bible study classes twice weekly. In 1942 I began to carry Bibles and Bible study aids from door to door because I wanted the men and women I contacted to know of the hope which is set forth in God's word.

The primary ordination of Jehovah's Witnesses comes from Almighty God. Each of such witnesses relies on the identical Bible authority that Jesus Christ cited. Jesus quoted from Isaiah 61:1, 2 as follows: "The spirit of the Lord is upon me, because he hath anointed me to preach the gospel to the poor, he has sent me to heal the broken hearted, to preach deliverance to the captives, and recovering the sight to the blind, to set at liberty them that are bruised, to preach the acceptable year of the Lord, and comfort all that mourn." Luke 4:17-19

Jehovah's Witnesses speak of their ordination as did Jesus' apostles. Apostle Paul said, "I am ordained a preacher, and an apostle." Ordination to preach does not depend upon the age of the individual, except that the individual must have reached the age of discretion. One must be able to understand, to know intelligently, and make an agreement to do the will of Almighty God. Timothy was quite

young and not yet of "full age" or of mature years when he was ordained to preach and teach. (See I Timothy 4:11-13)

To be ordained does not require one to attend a seminary or parochial or divinity school. Jesus did not attend such a school. He was taught by his parents at home, and afterward studied the scriptures. Attending the Watchtower Bible-study meetings is sufficient training to enable one to do the will of God as his minister.

Although I, as one of Jehovah's Witnesses, will not attend such ecclesiastical schools set up by religious organizations, I have received a much higher training and schooling in the word of God by attending places of study to qualify for my ordination. Jesus' apostles were well educated in the Aramaic language of their day, the laws of the land, and especially in the word of God. They studied the scriptures of Christ Jesus. Just so today, Jehovah's Witnesses are very familiar with the word of Almighty God as it appears in the Bible, and they, too, instruct persons of good will.

I have been farming for the last three years and also worked at the Bollman Hat Factory to accumulate funds to do more farming. I am now a farmer and raise livestock and grow grain from the fifty odd acres that I am cultivating. I engage in this secular work to keep me going in my ministry work. I'd appreciate it if you would take the statement of secretary Charles Brennen (Agriculture Department) which was: Quote: "Farmers should tell their local draft boards to exempt their farm helpers." How can this be done if the farm managers and operators are not exempt? Who is to harvest the grain planted last November? Who is going to plant and harvest the corn and make the hay if I'm not here to do and direct this work?

I go from house to house just as Jesus and the apostles did. See Acts 20:20 and Mark 6:6. When I go preaching I present literature to the people which they can use in conjunction with their Bibles. If the person is interested and

if permitted I then establish a Bible study in their home. These studies are conducted by using the Bible explanations and questions as provided by the Watchtower Bible and Tract Society. If the person continues to show interest I invite them or bring them to the Company meetings in harmony with the scriptures at Hebrews 10:25, "Forget not the assembling of yourselves together and exhorting one another and so much the more as you see the day approaching."

Jehovah's Witnesses participate in proclaiming the Gospel of God's Kingdom. The above work, together with participating in company meetings are essential requirements that must be met before one will be recognized as a minister by the Watchtower Society. Preaching at funerals and performing marriage ceremonies are not essential requirements for being recognized as a duly ordained minister by the Watchtower Society, because in the tenth chapter of Matthew, relates the instruction given by Jesus to his disciples as to their course of action when preaching, and it said nothing about performing funeral or marriage ceremonies. Not at any time do the scriptures mention that a member of the clergy officiate at either of these ceremonies.

Preaching the Gospel is of great importance because the apostle Paul stated at I Cor. 9:16, "Woe is me if I preach not the Gospel." Jesus said, "Go ye into the world and preach the Gospel to every creature." I must preach and teach as did my Lord and master Christ Jesus and also the apostles. This they did by going from house to house (Acts 20:20) and gathering the interested ones together. They did not build temples and ask the people to come there and worship, because it states at Acts 17:24, 25, "God dwelleth not in temples made by hands." The Bible shows what is 'pure worship' at James 1:27: "For the worship that is pure and holy before God the Father, is this: to visit the fatherless and the widows in their afflictions, and that one keep himself unspotted from the world." I am a Christian and

therefore my weapons are not carnal. II Corinthians 3:5 states, "For though we walk in the flesh, we do not war after the flesh, for the weapons of our warfare are not carnal, but mighty through God to the pulling down of strongholds, casting down imaginations, and every high thing that exalteth itself against the knowledge of God, and bringing into captivity every thought to the obedience of Christ." I am proclaiming the message concerning the righteous Kingdom which Jesus taught his followers to pray for as the only hope for mankind. I therefore could not take part in the conflict between the nations.

The work that I now do is of greatest universal importance therefore I could not take part in a conflict of national or even international importance. If I would take part in such conflict I would not be keeping unspotted from the world, and I would therefore be breaking my covenant that I made with Almighty God. Romans 1:31, 32 says, "Covenantbreakers are worthy of death." A Christian learns from the prophecies now being fulfilled that he must give all his effort to bring the Gospel message to people who are thirsting for the truth.

We are living in the time of the great trouble as related in the 24th chapter of Matthew. All statements relative to the 24th chapter of Matthew are in the process of fulfillment for the first time since 1914. (Matthew 24:14). "And this Gospel of the kingdom shall be preached in all the world for a witness unto all nations, then the accomplished end will come."

In view of the facts set forth in this statement, and all other information which I hereby submit as a part of my record, show that I should be classified in 4D. I therefore ask you, as members of Local Board #28, before you make a decision as to whether or not I am a duly ordained minister you should take into consideration my assigned duties and in what manner I am regarded by other Jehovah's Witnesses. I also ask you as Board officials not to be influenced by

your personal feelings regarding the doctrines taught by Jehovah's Witnesses or your personal likes or dislikes of any individual of the organization. I would like you to examine the information above submitted carefully, and not make a decision by using your personal ideas as to what you feel constitutes an ordained minister.

In the United States of America the Selective Service Act of 1948 which controls the decision of draft boards and public officials provides for the deferment of conscientious objectors and also for the exemption of those under vows to God. Section 6(j) provides for the deferment of "any" person "Whose training and belief in a relation to a supreme Being involving duties superior to those arising from any human relation" prevent such person from turning aside from those superior duties which he owes to the Supreme Being.

If there is any further information which you desire, you can call upon me or communicate with the Watchtower Society.

Respectfully submitted,
Philip Andrew Witmer
Philip Andrew Witmer

March 19, 1951

Re: Order #36-28-30-71
Philip Andrew Witmer

The Board met with registrant today. The registrant informed the Board that he left his place of employment on March 3, where he had worked for three years in a hat factory. The Board chairman immediately pointed out that he was classified as 1-A on February 21, which meant he left his position about two weeks later. He then mentioned that his father had a farm which had not been worked as a farm for 23 years but that he felt he was going to start getting

this farm in shape. Prior to this time he stated he had gotten a few acres in shape for their own family use so that they would not be dependent upon other people.

The registrant then pointed out that he was a minister of the Gospel and the only evidence he presented to substantiate this fact was some paraphernalia from the Watchtower Association of the Jehovah Witness. The registrant was asked if he was an ordained minister and he said Jehovah Witnesses became ordained when they started distributing their literature. The Board felt this was not sufficient evidence to warrant a 4-D Classification and informed the registrant his case would be sent up to the Appeal Board following his physical examination.

APPEAL BOARD
STATE OF PENNSYLVANIA

Northwest Office Bldg., PO Box 92
Harrisburg, Pa.

(Appeal Board Stamp)

APR 25 1951
[Local Board Stamp]

Date: 24 April 1951

United States Attorney
Eastern District of Pennsylvania
Fourth Floor, U. S. Court House
Ninth and Market Streets
Philadelphia 7, Pennsylvania

Re: WITMER, Philip Andrew
SS No. 36-28-30-71

Dear Sir:

The file of the above registrant has been reviewed by members of the Appeal Board and they are of the opinion

that he is not entitled to a class lower than Class 4-E or to Class 4-E. Therefore, the cover sheet and file of the above registrant is transmitted herewith to the Department of Justice in accordance with Section 1626.26(a) (4) of the Regulations for the purpose of securing an advisory recommendation.

For the Appeal Board:
(Mrs.) Mary L. Cohen
Clerk

cc to Local Board No. 28
SSSP-550

DEPARTMENT OF JUSTICE
OFFICE OF THE DEPUTY ATTORNEY GENERAL

Washington
October 18, 1951

Chairman, Appeal Board for the
State of Pennsylvania
Selective Service System
Northwest Office Building
Harrisburg, Pennsylvania

Re: Philip A. Witmer
Selective Service No.
36-28-30-71
Local Board No. 28
Reading, Pennsylvania

Dear Sir:

As required by Section 6(j) of the Universal Military Training and Service Act, an inquiry was made in the above-captioned case and an opportunity to be heard on his claim for exemption as a conscientious objector was given to the registrant by Honorable Shippen Lewis, Hearing Officer for the Eastern District of Pennsylvania.

After consideration of the character and good faith of the objections of the registrant, the Department of Justice recommends to your Board that his claim for exemption from combatant and noncombatant training and service be not sustained.

You will note that this Department does not concur in the recommendation of the Hearing Officer. January 30, 1951, while employed in a hat factory, registrant wrote a letter to the local board, in which he states: "It is my ambition to become a farmer and devote all my time to farming. For this reason I am appealing to you to grant me an agricultural classification as I assure you that I will increase production year after year, and contribute a satisfactory amount for the war effort and civilian use." In his letter to the local board dated March 1, 1951, registrant claims to be a minister of the Gospel. Registrant's inconsistent statements and his offer to contribute to the war effort are believed to be incompatible with a sincere conscientious objector claim.

It is also noted that registrant did not sign series I (A) or (B) on SSS Form No. 150.

The Selective Service Cover Sheet in the case is returned herewith.

Sincerely,
A. Devitt Vanech
A. Devitt Vanech
Deputy Attorney General

PHILIP A. WITMER
(36-28-30-71)

FBI REPORT

The registrant is one of Jehovah's Witnesses. He and his father are very active in the group.

EDUCATION: A teacher in the grade school which the registrant once attended, who had him for eight grades, speaks highly of his character, knows that the family are Jehovah's Witnesses and thinks that the registrant is a sincere objector.

CHURCH: A number of other Jehovah's Witnesses say that the registrant and his father are very active in the group. Those who profess to know about his position as to conscientious objection believe him to be sincere.

WORK: The foreman at the factory where the registrant worked for about three years until recently thinks he is "very religious and very sincere in his beliefs." A fellow employee at this factory knows the registrant and his father and says that the registrant has been "very aggressive" in talking religion to his fellow workers, and that he has heard him say not long ago that it is wrong for Christians to go to war.

NEIGHBORS: The neighbors who have given information agree as to the high character of the registrant and his family and as to their activity as Jehovah's Witnesses, and those who express an opinion as to the registrant's pacifism think that he is sincere in his stand.

STATEMENT OF FACTS

The registrant is one of Jehovah's Witnesses, to which group his father has belonged since before his birth.

The registrant signed Series XIV in Form 100 but did not in Registrant's Statement Regarding Classification suggest his proper classification. With Form 100 he sent the Local Board a letter of 1-30-51 asking for "an agricultural classification", promising to "contribute a satisfactory amount for the war effort and civilian use."

In Form 150 the registrant takes the position which all Jehovah's Witnesses take,—that he is "neutral" in all con-

troversies between worldly government, that his obligations to God are superior to any other obligations and that consequently he will not take part in war. This position is a form of pacifism peculiar to this group. They say that they would fight at the Lord's command, but that there is now no such command to them. They say that the ancient Jews were justified in making war because Jehovah commanded them to. They claim to be ministers of the gospel and object to army service because it will interfere with their ministry. They usually refer also to the Christian obligation to love others and not to hate or harm them. The registrant says on this point: "We believe in love and you are supposed to love everybody even your enemies." This registrant's pacifism is based on all these considerations. His position is the same as that of many members of this group whom I heard during the war and who were classified 4E.

As to taking noncombatant service, he quotes his old school teacher who used to say, the boy who makes the snow balls is just as responsible as the boy who throws them.

The only witness was Forrest R. Baer, a full-fashioned knitter, who has belonged to the Reading Company of Jehovah's Witnesses since 1935. He has known the registrant for about five years and vouches for him as a sincere and active member of the group. During the war, Mr. Baer was classified as a minister. He refused to go to a C. P. S. Camp and consequently, spent thirty-nine months in Lewisburg Prison, which seems to me to show the strength of his convictions.

The registrant is evidently a life-long and rather active Jehovah's Witness. His desire to be deferred on other grounds does not seem to me to invalidate his claim to be regarded as a conscientious objector. It is not unnatural to prefer a deferment easier to obtain.

Record of Classification by Appeal Board in I-A

RECOMMENDATION

I recommend that the registrant be classified IV-E.

Shippen Lewis
Shippen Lewis
Hearing Officer

SELECTIVE SERVICE SYSTEM
INDIVIDUAL APPEAL RECORD

[Local Board Stamp]
APR 13 1951

Name of registrant (Last) *Witmer* (First) *Philip* (Middle) *Andrew* Selective Service Number *36 28 30 71*
Classified by local board in Class *I-A* . . .

X Forwarded on appeal taken by Registrant
Date forwarded to appeal Board *April 13, 1951* . . .

Leonore C. Rhoda
Clerk of Local Board

Minutes of Action by Appeal Board

[Local Board Stamp]
NOV 6 1951

• • •

Appeal Board State of Pennsylvania Northwest Office Bldg., PO Box 92 Harrisburg, Pa.
Classified in Class *I-A* until . . . by the following vote:

Yes *4* No *0* (Date of classification by Appeal Board)
NOV 2 - 1951

[Signature]
Member or Clerk of Appeal Board

• • •

SSS Form No. 120

Reinholds, Pa.
Nov. 15, 1951

Local Board 28
Balis Building
6th & Court St.
Reading, Pa.
Gentlemen:

Please find enclosed two letters. I wish to have them placed in my file.

One is a copy of a letter sent to General Hershey and the other one to the President of the appeal board.

The second one is a statement of my baptism.

In view of the letters sent to the President of the board of appeals, I ask that you defer the issuance of induction order until the Director and the General have acted upon the reconsideration of my classification.

Respectfully submitted
Philip A. Witmer 36-28-30-71
Philip A. Witmer
NOV 16 1951
[Local Board Stamp]

R. F. D. #1
Reinholds, Pa.
November 16, 1951

NOV 16 1951
[Local Board Stamp]
Gentlemen:

I would appreciate your careful consideration of this letter as it is of the utmost importance.

On November 7, I Philip A. Witmer, 36-28-30-71 received another 1A classification by a vote of 4 to 0, and feel

that there must be a serious mistake somewhere, and ask that you carefully consider the facts at hand.

On January 25 I received my Selective Service Questionnaire from my local draft board (28), and stated the facts as good as possible also requesting the questionnaire for conscientious objectors.

I was classified 1A, February 22, after which I requested to have a hearing at the local board, and was granted this request. I appeared and answered the questions that were asked of me.

On March 28, 1951, I got a letter informing me that I would have to take a physical examination before they would consider my appeal. On April 4 I took my physical examination at New Cumberland, Pa. It was April 11, 1951, when Board 28 mailed me the letter informing me that I was found acceptable for induction into the armed services.

I did not hear anything until I received a letter informing me that there was to be a hearing for me with Shippen Lewis in Philadelphia, Pennsylvania. Mr. Lewis asked me a few questions but did not have much to say. Later Mr. Lewis notified me concerning the vote of the appeal board made on his recommendation that I should be classified in 1A. This letter is written in request for a 4D minister's classification.

I am now and always have been one of Jehovah's Witnesses ever since I've had an understanding of what it means to believe in a supreme being. At about 14 years of age I felt that it was my duty to tell others of the things I have learned about God's purposes. In order to more effici ntly preach "this Gospel of the Kingdom" I am continuing my study of the Bible with the help of the Watchtower Bible Study Aids. Briefly I will explain why I cannot enter the armed forces.

At Acts 20:20 we read, "While I did not hold back from telling you any of the things that were profitable nor from teaching you publicly and from house to house." (New

World Translation). Preaching the gospel is of great importance because the apostle Paul said at I Corinthians 9:16, "Woe to me if I did not declare the good news." Jesus said, "Go ye into the world and preach the gospel to every creature." I too must preach and teach as my lord and Master did. Let us also read what the Bible states at James 1:27. "For the worship that is pure and holy before God the Father is this: to visit the fatherless and the widows in their afflictions, and that one keep himself unspotted from the world."

Those are just a few of the reasons why I could not take part in carnal warfare. It would mean I'd have to stop doing door to door work which is preaching this gospel of the Kingdom, and would mean that I am not unspotted from this world, but would be a part of it ready for destruction. This is just a small part of the statement which I sent along with my questionnaire which gave a detailed explanation of the work I am doing.

This one thing I wish to bring to your attention. On Sunday September 23, 1951, I was baptized in water in the same manner as Jesus Christ was baptized. Being baptized is an outward expression of showing your faith in the Lord, and a promise to do his will by preaching the word. Conditions in the world at the present time are well described in the 24th chapter of Matthew.

I hope this letter will help you understand why I cannot accept a 1A, but ask for a 4D minister's classification in all honesty and truth.

If there are any recommendations on your part please pass them on to Local Board 28, Balis Building, 6th & Court Streets, Reading, Pa.

Respectfully submitted,

Philip A. Witmer
Philip A. Witmer

Letter of Appeal Board to Defendant, Nov. 20, 1951

I Philip A. Witmer 36-28-30-71 wish to state that I was baptized in water according to the way the Bible has set forth.

Being baptized is a *grate* step for a Christian to take. It means that he has set himself apart from the world and it's affairs and has consecrated himself to serving the Lord.

NOV 16 1951
[Local Board Stamp]

NOV 21 1951
[Local Board Stamp]

20 November 1951

Mr. Philip A. Witmer
R. F. D. #1
Reinholds, Pennsylvania

Dear Sir:

This will acknowledge receipt of your letter of 16 November 1951, which I am returning herewith inasmuch as the Appeal Board acts only upon information submitted through the Local Boards.

Your case was considered by the Appeal Board at its meeting held 2 November 1951, at which time all information contained in your file (including a recommendation from the Department of Justice that your claim for exemption from combatant and non-combatant service be not sustained) was carefully reviewed and considered by the Appeal Board, and their decision to retain you in Class 1-A was made by a vote of 4 to 0.

I would suggest you direct any future correspondence

to the Local Board with whom you are registered—No. 28.

For the Appeal Board

(Mrs.) Mary L. Cohen
Clerk

encl.
cc to Local Board No. 28
No. 36-28-30-71

[Government's Exhibit No. 1]

SELECTIVE SERVICE SYSTEM
ORDER TO REPORT FOR INDUCTION

NOV 21 1951
[Local Board Stamp]

(Date of mailing) *Nov. 21, 1951*

The President of the United States,

To (First name) *Philip* (Middle name) *A.* (Last name) *Witmer* (Selective Service Number) *36 28 30 71* (Street and number) *R. D. #1* (City) *Reinholds* (State) *Penna.*

Greeting:

Having submitted yourself to a Local Board composed of your neighbors for the purpose of determining your availability for service in the armed forces of the United States, you are hereby ordered to report to the Local Board named above at (Place of reporting) *7th & Franklin St. Station, inside, near telephone booths, Reading, Penna.* at (Hour of reporting) at *6:00 A.*m., on the *fifth* day of *December*, 1951, for forwarding to an induction station.

* * *

Member of Local Board.

SSS Form No. 252

Defendant's Letter to Local Board, Nov. 28, 1951

NOV 28 1951
[Local Board Stamp]

Reinholds, Pa.
Nov. 28, 1951

Local Board No. 28,
Balis Building
6th & Court St.
Reading, Pa.
Sirs:

I received my induction orders for Dec. 5th 1951.

In view of this I ask that you give me an extension of at least 30 days or more if at all possible, that I might finish husking corn and make arrangements to sell or make other provisions for the livestock and feed.

The reasons for this request are that I thought that you would give me a suitable classification. (4 D) And since I am self employed I could not stop and just wait until I found out whether I was to be called or not, so I went ahead. I must do something to make a living the same as any body else, and since I like to be around animals and do farm work etc. I started to farm my father's farm, and for no other reasons.

The stock which I have consists of the following: 2 milk cows, 3 bulls, 2 *heffers,* all less than one year old, 3 brood sows, 2 of which will *forrow* between now and Christmas. One of them had a litter of 6 on Sunday Nov. 25, 1951, also 3 shoats. Total 12 hogs. Also 310 chickens. About 1200 bales of hay and 300 bales of straw. The corn from about 20 acres (I sold some) and some fodder.

My father will not do anything like husk corn or tend stock, because he has a steady job and has no time for this.

I hope you understand the situation I am in. You don't have to take my word for the things I have told you, come and see for yourself if you wish.

I also do not deny the fact that I am a minister for Al-

mighty God, and will continue to *persue* this course until I am rightfully recognized as such.

Yours truly
Philip A. Witmer
36-28-30-71

November 28, 1951

Mr. Philip A. Witmer
R. D. #1
Reinholds, Pennsylvania

Re: Order #36-28-30-71

Dear Mr. Witmer:

After contacting Board members this morning with reference to your letter of today, I regret to advise they are unable to postpone your induction for thirty days for the reasons outlined in your letter.

Very truly yours,
(Mrs.) Leonore R. Moyer, Clerk
DEC 6 1951

[Local Board Stamp]
g:34:12-4

4 December 1951

The Director
National Headquarters
Selective Service System
1712 G Street Northwest
Washington 25, D. C.

Re: Philip A. Witmer
36-28-30-71

Attention: Col. Lewis F. Kosch

Dear Sir:

This will acknowledge receipt of your letter of 27 November 1951 relative to the above registrant.

Letter of State Director to National Director

We have reviewed the file and find that in the questionnaire which was returned to your Local Board on January 31, 1951, the registrant was employed by a hat manufacturer in Adamstown, Penna., and in addition, operated his father's farm. He indicated in series 14 that he was conscientiously opposed to war, and in section 6 of the questionnaire, he had overwritten the words "does not apply". He did not indicate what classification he should be granted in the applicable portion of the questionnaire. Upon receipt of the completed Form 150, he was classified in Class I-A by the Local Board on February 21, 1951, and on April 13, 1951, the file was forwarded to the Appeal Board, who in turn reviewed it and referred it to the United States Attorney. The Hearing Officer recommended that the registrant be classified in Class IV-E. However, the United States Attorney in a letter signed by the Deputy Attorney General, Washington, D. C., recommended that the report of the Hearing Officer be not credited, and that claim for exemption from combatant and non-combatant training and service be not sustained. The reasons for the action of the Department of Justice are the registrant's inconsistent statements and his offer to contribute to the war effort by

* * *

offering to increase the productivity of his father's farm. The Appeal Board retained the registrant in Class I-A by a unanimous decision on November 2, 1951. The registrant has been ordered to report for induction on December 5, 1951.

From review of the file, we are not convinced of the validity of the claims of this registrant to be either a conscientious objector or a minister of religion, and we can see no

reason to take any action in this matter. We are permitting the induction of the registrant to proceed as ordered.

For the State Director:

HENRY R. SHERRARD
Major, INF
Asst. Chief, Manpower Division

Copy: Local Board No. 28

DEC 6 1951
[Local Board Stamp]

[Government's Exhibit No. 2]

Dec. 5, 1951

I refuse to be inducted into the Armed Services of the United States.

[Signed] Philip A. Witmer

WITNESS:

1. s/ Vincent J. Fenerty
   Capt USAF
   Enlistment & Induction Officer
2. s/ Thomas W. Stone
   1st Lt Armor
   Enl & Ind Officer

A TRUE COPY
Vincent J. Fenerty
VINCENT J. FENERTY, Capt USAF

Notice of Refusal to Submit to Induction

DEC 10 1951
[Local Board Stamp]

VJF/kwg
6 Dec 51

SUBJECT: Refusal to Submit to Induction in the Armed Forces of the United States of America

To: Mr. Arthur A. Maguire
United States Attorney
Middle District of Pennsylvania
Scranton, 1, Pa.

1. On 5 December 1951, Philip Andrew Witmer, of R. D. #1, Reinholds, Penna. was ordered to this Induction Station by Local Board #28, Balis Building, Sixth & Court Streets, Reading, Pennsylvania for entry into the Armed Forces of the United States of America.

2. At the induction ceremony Philip Andrew Witmer refused to be inducted into the Armed Forces on two *occassions*. He was removed from the body of men being inducted and brought to my office where he again refused to be inducted. Philip Andrew Witmer stated that he was a member of Jehovahs Witnesses and the dictates of his conscience and religion would not permit him to enter into military service, even in a non-combat status. Of his own volition he signed the enclosed statement which you will note was witnessed by myself and 1st Lt. Thomas W. Stone, Armor.

3. Witness to this incident were:

a. Capt. Vincent J. Fenerty, USAF
USA & USAF Recruiting Main Station
216 Locust St.
Harrisburg, Pa.

b. 1st Lt Thomas W. Stone, Armor
USA & USAF Recruiting Main Station
216 Locust St.
Harrisburg, Pa.

Exhibits: Defendant's Selective Service File

4. Upon Philip Andrew Witmer's refusal to accept induction he was told to return to his home.

FOR THE COMMANDING OFFICER:

Vincent J. Fenerty
VINCENT J. FENERTY
Capt USAF
Enl & Ind Officer

1 Incl
Statement

January 22, 1952

Registrant called at Board Office this date and asked to see his file. File was given registrant, who noted information from file.

MOTION FOR JUDGMENT OF ACQUITTAL

The Defendant moves the Court to enter Judgment of Acquittal for the following reasons:

1. The induction order with the violation of which Defendant is charged is invalid because:

(a) The local board failed to consider the new information which it received at the time of Defendant's personal appearance, as required by Selective Service Regulation Section 1624.2(c).

(b) The local board failed to again classify the Defendant in the same manner as if he had never before been classified, as required by Selective Service Regulation section 1624.2(c).

(c) The local board failed, as soon as practicable after it again classified the Defendant, to mail notice thereof on Notice of Classification (SSS Form No. 110) to the Defendant, as required by Selective Service Regulation section 1624.2(d).

Darlington Hoopes
Attorney for Defendant

MOTION TO AMEND MOTION FOR JUDGMENT OF ACQUITTAL

And Now, January 15, 1953, the defendant by his Attorney, Darlington Hoopes, moves to amend his motion for Judgment of acquittal by adding sub-paragraph (d) so that the same will read as follows:

1. The induction order with the violation of which Defendant is charged is invalid because:

(a) The local board failed to consider the new information which it received at the time of Defendant's personal appearance, as required by Selective Service Regulation section 1624.2(c).

(b) The local board failed to again classify the Defendant in the same manner as if he had never before been classified, as required by Selective Service Regulation section 1624.2(c).

(c) The local board failed, as soon as practicable after it again classified the Defendant, to mail notice thereof on Notice of Classification (SSS Form No. 110) to the Defendant as required by Selective Service Regulation section 1624.2(d).

(d) The action of the local board and the appeal board in denying Defendant's claim for classification as a consci-

entious objector had no basis in fact and was therefore arbitrary and capricious.

Darlington Hoopes
Attorney for Defendant

OPINION

Defendant, found guilty by a jury of willfully refusing to submit to induction into the armed forces of the United States,[1] moves for judgment of acquittal. The record consists of the Selective Service file,[2] testimony of the clerk of the local board and of an army officer; the latter as to the refusal to be inducted. Defendant did not testify or offer any independent testimony on his behalf.

A valid order to report for includes the duty to submit to induction. See *Billings* v. *Truesdell,* 321 U. S. 542 at 557, 64 S. Ct. 737, 88 L. Ed. 917. While not disputing the refusal to be inducted defendant contends that the induction order was invalid and unenforcible. He claims he was not classified in conformity with the Act and regulations adopted pursuant thereto, that he was not afforded procedural due process, and that the local and appeal boards, without basis in fact and in an arbitrary and capricious manner, denied him the classification to which he was entitled.

In answering his classification questionnaire defendant advised that he had been working in a hat factory for three years at $.92 per hour 40 hours a week; that he owned some livestock and had 38 acres of land under cultivation. Stating that his ambition was to devote all of his time to farming, he requested an agricultural deferment, assuring the board that he would increase production and contribute a satisfactory amount to the war effort and civilian use. He stated

[1] 50 USCA App. § 462, 32 CFR § 1632.14 (1951 ed.).
[2] See United States v. Borisuk, Slip Opinion, 3 Cir., July 14, 1953.

that the section (Series VI) as to ministers and students preparing for the ministry did not apply, but he requested a special form, SSS Form 150, for conscientious objectors.

In answering Form 150 he stated that he was a Jehovah's Witness, that since his youth he had studied the bible with the aid of the *Watchtower*, relying for guidance upon Richard Palms, the leader of the Kingdom Hall which he attended. He supplied a copy of the *Watchtower* as a statement of the creed of the Jehovah's Witnesses relative to participation in war. While when asked the question, "Have you ever given public expression . . . to the views expressed . . . as the basis for your claim made in Series I (Claim for Exemption)?" he answered "No", he did state that in addition to his factory and farm work he witnessed from door to door.

Based upon the foregoing, the local board classified him 1-A and notified him thereof on SSS Form 110. Defendant then wrote the local board as follows: "On the strength of my right to appeal my service classification, I wish to state that I am a minister of the gospel. On the strength of this fact I wish to appeal this classification and request a personal appearance to present evidence to this fact."

The local board granted him a personal appearance. Defendant appeared, answered questions and submitted a typewritten statement signed by him, an affidavit of Richard Palms and a copy of *Watchtower*. In his written statement defendant spoke of his witnessing activities, discussed ordination and the prerequisites thereof as understood by Jehovah's Witnesses. He worked in the factory to aid him in his farming, and in secular work to aid him in his ministry. He did not believe in taking part in armed conflicts. He spoke in favor of agricultural deferments and pointed to the provisions of the Act as to deferments of conscientious objectors and exemptions of ministers. He asked the board before making a decision to consider his assigned duties and the manner in which he was regarded by other

Jehovah's Witnesses, and not to rely upon any personal ideas, feelings or prejudices as to what constituted an ordained minister. The affidavit stated that for years on many occasions defendant engaged in preaching activities, that reports and records thereof were available. Such records and reports were not however produced.

The clerk of the local board testified that when defendant completed his presentation, the members of the board discussed the matter and the board chairman then told the registrant that his I-A classification would remain the same, his appeal would be honored; that if he was found acceptable after physical examination for the armed service his file would be forwarded to the appeal board.

On the cover sheet of defendant's file appears the following: "3/19/51. Board met with registrant. No action taken. See note in file." The note, dictated by the chairman of the board, reads as follows:

> "The board met with registrant today. The registrant informed the board that he left his place of employment on March 3, where he had worked for three years in a hat factory. The Board chairman immediately pointed out that he was classified as 1-A on February 21, which meant he left his position about two weeks later. He then mentioned that his father had a farm which had not been worked as a farm for 23 years but that he felt he was going to start getting this farm in shape. Prior to this time he stated he had gotten a few acres in shape for their own family use so that they would not be dependent upon other people.
>
> "The registrant then pointed out that he was a minister of the Gospel and the only evidence he presented to substantiate this fact was some paraphernalia from the Watchtower Association of

> the Jehovah Witness. The registrant was asked if he was an ordained minister and he said Jehovahs Witnesses became ordained when they started distributing their literature. The Board felt this was not sufficient evidence to warrant a 4-D classification and informed the registrant his case would be sent up to the Appeal Board following his physical examination."

Defendant being found physically acceptable his file was sent to the appeal board which in turn asked the Department of Justice for an advisory recommendation. The Department of Justice did not concur in the IV-E recommendation of its hearing officer and recommended rejection of defendant's claim stating "Registrant's inconsistent statements and his offer to contribute to the war effort are believed to be incompatible with a sincere conscientious objector's claim."

The appeal board voted 4-0 to classify defendant I-A and sent him Form 110 notifying him thereof. After he was ordered to report for induction, the file was reviewed by the State Selective Service headquarters; they in turn were not convinced of the validity of defendant's claim to be either a conscientious objector or a minister of religion, and therefore took no action to stay induction.

Defendant did not discontinue working in the factory until he was classified I-A. There was apparently some question as to the good faith of his farming activities. His offer to help the war effort was inconsistent with his claim to be a conscientious objector. His claim to be a minister was inconsistent with his answer in the classification questionnaire that that section did not apply. There was a question as to the quantum and quality of the proof offered as to the extent of his witnessing activities and of his claim to be a minister. See *Dickinson* v. *United States*, 9 Cir. 1953, 203 F. 2d 336 at 344; *Cox* v. *United States*, 332 U. S. 442 at

445, 68 S. Ct. 115, 92 L. Ed. 59. Defendant was not baptized until his case was on appeal.

On cross-examination the clerk of the local board said that when the chairman told the registrant his classification would remain the same he also stated that the matter was out of their hands because he had taken an appeal. It appears, however, that the board received and considered everything submitted by the defendant, decided that he was not entitled to a change of classification, and advised him thereof before he left the board room. As a matter of law the board could take no further action except to arrange for physical examination and, if defendant were found acceptable, send the file to the appeal board and await the outcome. See 32 CFR § 1624.2(e); *Id.* § 1624.3.

Defendant argues that the board's statement as to the effect of the appeal shows they did not properly consider his case. Further that the board did not comply with 32 CFR § 1624(c) because it did not again classify him "as if he had never before been classified", or send him notice of the classification anew on Form 110. *Id.* (d).

Applying the usual test appropriate to consideration of a motion for judgment of acquittal, see *United States* v. *Stoehr,* D. C. M. D. Pa. 1951, 100 F. Supp. 143 at 149, affd. 3 Cir., 196 F. 2d 276, and the teachings of the cases defining the scope of review in Selective Service cases, see *Estep* v. *United States* 327 U. S. 114, at 120, 66 S. Ct. 423, 90 L. Ed. 567; *Cox* v. *United States, supra,* 332 U. S. at 448; *Eagles* v. *Samuels,* 329 U. S. 304 at 314, 67 S. Ct. 313, 91 L. Ed. 308; *United States* v. *Nugent,* 346 U. S. 1 at 9, 10, did either the local or appeal boards exceed their jurisdiction? Did they proceed arbitrarily and without due regard to the rights of the registrant or make the classification without basis in fact to support it?

The decisions of the board may not be set aside if they

are supported by evidence[3] and must be accepted even though they may be erroneous. The inquiry is not whether the court would reach a different result from the evidence before the draft board. *Dickinson* v. *United States, supra,* 203 F. 2d at 343.

The burden is upon the registrant to bring himself within the excepted class. *United States* v. *Jewell,* 112 F. Supp. 327 at 329. He must establish either a complete lack of factual basis for his classification, some controlling bias or prejudice against him (*Swaczyk* v. *United States,* 1 Cir. 1946, 156 F. 2d 17 at 19), or a deprivation of basic and procedural safeguards, i.e., procedural error so flagrant as to result in an unfair hearing. *Eagles* v. *Samuels, supra,* 329 U. S. at 312; *Kotteakos* v. *United States,* 328 U. S. 750 at 757 *et seq.,* 66 S. Ct. 1239, 90 L. Ed. 1557.

Receiving and considering everything the registrant submitted (Ex Parte *Stanziale, supra,* 138 F. 2d at 315), considering all possible classifications (*Cox* v. *Wedemeyer,* 9 Cir. 1951, 192 F. 2d 920 at 922; see and cf. *United States* v. *Rubinstein,* 2 Cir. 1948, 166 F. 2d 249 at 257; *United States* v. *Schoebel,* 7 Cir. 1953, 201 F. 2d 31), coming to a decision thereon, advising the registrant as to the result thereof, and placing a proper summary in the files constitutes *de novo* consideration. *Atkins* v. *United States,* 10 Cir. 1953, 204 F. 2d 269 at 271.

The Department of Justice and the appeal board were free, if there was a proper factual basis, to reject the recommendation of the hearing officer. *United States* v. *Nugent, supra,* 346 U. S. 1.

"It was the board's duty to pass on the question of which was the believable evidence and upon the soundness of the objection." *United States* v. *Bender,* 3 Cir., Slip Opinion,

[3] Cf. Cox v. United States, *supra,* 332 U. S. 442; Smith v. United States, 4 Cir. 1946, 157 F. 2d 176 at 178; United States v. Cain, 2 Cir. 1944, 144 F. 2d 944 at 947; *Ex Parte* Stanziale, 3 Cir. 1943, 138 F. 2d 312 at 315.

July 21, 1953; *Dickinson* v. *United States, supra,* 203 F. 2d at 345.

The questions here presented are for the court. *United States* v. *Roberson,* 108 F. Supp. 423; *Elder* v. *United States,* 9 Cir. 1953, 202 F. 2d 465 at 466; *Cox* v. *United States, supra,* 332 U. S. at 452-453.

Considering the proof necessary to constitute one a minister, as defined by the Act, 50 USCA App. § 456(g) Pocket Supp., and discussed in the cases, see *Cox* v. *United States, supra,* 332 U. S. at 445, 449 *et seq.; Dickinson* v. *United States, supra,* 203 F. 2d at 343, 345; *Rase* v. *United States,* 6 Cir., 129 F. 2d 204 at 209; *Martin* v. *United States,* 4 Cir. 1951, 190 F. 2d 775 at 777; *United States* v. *Kose,* 106 F. Supp. 433 at 434; *United States* v. *Bartelt,* 7 Cir. 1952, 200 F. 2d 385 at 388, we are convinced that the board had adequate basis in fact in the record to deny the defendant classification as a minister, regular or ordained, and that there is nothing in the record to justify any contention that the board acted arbitrarily or unreasonably or other wise abused its discretion in doing so. Likewise as to his conscientious objector claim (50 USCA App. § 456(j); *United States* v. *Annett,* 108 F. Supp. 400 at 402), and the request for an agricultural deferment. *Imboden* v. *United States,* 6 Cir. 1952, 194 F. 2d 508 at 510.

Unlike the situation in *United States* v. *Zieber,* 3 Cir. 1947, 161 F. 2d 90 at 91, the board here was clear as to the status of defendant's case, i.e., the distinction between passing upon a request for a change of classification and a right to appeal. In *United States* v. *Stil* , 3 Cir. 1948, 169 F. 2d 455, the board took no action upon the registrant's claim for a change of classification but sent the file forthwith to the appeal board. A like situation occurred in *Knox* v. *United States,* 9 Cir. 1952, 200 F. 2d 398 at 400, and in part in *United States* v. *Fry,* 2 Cir. 1953, 203 F. 2d 638. We agree

wholeheartedly that §§ 1624.2(c) and (d) should be complied with. There is no table of weights and measures for ascertaining what constitutes due process.[4]

We think, however, that the sections were substantially complied with and that the defendant was in no manner prejudiced by what actually occurred. The situation in *Martin* v. *United States, supra,* 190 F. 2d at 778, 779, is quite opposite, and see *Atkins* v. *United States, supra,* 204 F. 2d at 271; *United States* v. *Kose, supra,* 106 F. Supp. at 434, where a letter was sent instead of Form 110. The court in *Knox* v. *United States, supra,* 200 F. 2d at 401, agreed with the limitations expressed by Judge Parker in the *Martin* case, and see *United States* v. *Fry, supra,* 203 F. 2d at 640.[5]

In the light of the foregoing, we have no alternative but to deny defendant's motion. An order to that effect will be handed down this date.

JOHN W. MURPHY
United States District Judge

September 25, 1953

[4] See dissenting opinion of Mr. Justice Frankfurter in Burns v. Wilson, 346 U. S. 137 at 149.

[5] In United States v. Strebel, 103 F. Supp. 628 at 631, defendant was prevented from presenting additional evidence. United States v. Laier, 52 F. Supp. 392, and United States v. Romano, 103 F. Supp. 597, defendant was denied a personal appearance. United States v. Graham, 108 F. Supp. 794, absent new evidence the board felt it could not reconsider defendant's classification, but see Davis v. United States, 6 Cir. 1952, 199 F. 2d 689 at 691. As to the reference to *Ex Parte* Fabiani, 105 F. Supp. 139, in United States v. Graham, *supra*, see and cf. United States v. Nugent, *supra*, 346 U. S. at 9, 10.

JUDGMENT AND COMMITMENT

Scranton, Pa.

On this 12th day of October, 1953, came the attorney for the Government and the defendant appeared in person and by counsel: Darlington Hoopes, Esq., 26 N. 6th St.. Reading, Pa.

IT IS ADJUDGED that the defendant has been convicted upon his plea of Not Guilty and a Verdict of Guilty of the offense of Violation 50 USCA 451; 462 "Selective Service Act of 1948"; and Proclamation of the President and Selective Service Regulations, as charged in one count of indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Three (3) Years.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ JOHN W. MURPHY
United States District Judge.

[fol. 61] UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 11,185

UNITED STATES OF AMERICA

v.

PHILIP ANDREW WITMER, Appellant

Appeal from the United States District Court for the Middle District of Pennsylvania

Argued February 2, 1954

Before Goodrich, McLaughlin and Hastie, Circuit Judges

OPINION OF THE COURT—Filed May 13, 1954

Per CURIAM:

This case, like its companion case of United States v. Hagaman, which opinion is filed this day, raises two questions. One is the procedural point. This point is exactly like that in the Hagaman case in that the registrant was notified orally, after personal appearance before the local Board, that his classification would not be changed. He was not given a written notice. But he did have knowledge of the Board's action and he did have his appeal. What we have said in Hagaman, and our reliance there on the Martin and Atkins decisions, applies here.

The other point in the case is the claim that the Board's classification had no basis in fact. Witmer claimed agricul-
[fol. 62] tural, ministerial, and conscientious objector classifications in a series of claims. Of course this is not, itself, conclusive; a man has a right to raise as many points as he has. But there were inconsistencies in his claims; he was willing to help the war effort by raising food for it, he said, but not to bear arms. His ministerial claim was easily negatived. After going through the record we think there was ample to let the administrative authorities conclude that none of his claims was well-founded.

The whole matter was thoroughly discussed by Judge

Murphy in his opinion, 115 F. Supp. 19 (M. D. Pa. 1953), and we cannot add helpfully to it except to point out that since it was written the Ninth Circuit was reversed in the Dickinson case by the Supreme Court, Dickinson v. United States, 346 U. S. 389 (1953).

The judgment of the district court will be affirmed.

A true Copy. Teste:

—— ——, Clerk of the United States Court of Appeals for the Third Circuit.

[fol. 63] [Stamp:] Received & Filed May 13, 1954. Ida O. Creskoff, Clerk

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 11,185

UNITED STATES OF AMERICA

vs.

PHILIP ANDREW WITMER, Appellant

On Appeal from the United States District Court for the Middle District of Pennsylvania

Present: Goodrich, McLaughlin and Hastie, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Middle District of Pennsylvania and was argued by counsel

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby affirmed.

Attest.

Ida O. Creskoff, Clerk.

May 13, 1954.

[fol. 64] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 65] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1953

No. —

PHILIP ANDREW WITMER, Petitioner,

vs.

UNITED STATES OF AMERICA

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon consideration of the application of counsel for petitioner,

It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including June 30, 1954.

Harold H. Burton, Associate Justice of the Supreme Court of the United States.

Dated this 1st day of June, 1954.

[fol. 66] IN UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 11,189

UNITED STATES OF AMERICA

v.

WILLARD ROGER HAGAMAN, Appellant

Appeal from the United States District Court for the Middle District of Pennsylvania

Argued February 2, 1954
Reargued March 19, 1954

Before Biggs, Chief Judge, and Maris, Goodrich, McLaughlin, Kalodner, Staley and Hastie, Circuit Judges.

OPINION OF THE COURT—Filed May 13, 1954

By Hastie, Circuit Judge.

This is an appeal from a conviction for failing and refusing to be inducted into the armed forces of the United [fol. 67] States after being ordered to do so.[1] There is no doubt that the appellant, Hagaman, refused to be inducted into the armed forces. The defense to the criminal prosecution is that he was not obliged to obey the order to report and be inducted because the order was predicated upon Selective Service classification so improper that a court, acting within judicial province as defined in *Estep* v. *United States,* 1946, 327 U. S. 114, should declare it invalid.

Hagaman makes three distinct contentions: first, that the local board failed to follow prescribed procedure; second, that his claim to deferment as a minister of religion was

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[1] "[A]ny person who . . . evades or refuses registration or service in the armed forces . . . shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment . . ." 50 U. S. C. A. App. § 462(a).

repected arbitrarily; and third, that the National Appeal Board had no basis for action it took changing his 1-O classification to 1-A.

All of us agree that the first and second contentions are without merit. The reasons for that conclusion appear in the opinion of Judge Goodrich. However, it is the decision of the court that appellant's third contention is sound and, therefore, that the conviction cannot be sustained.

This is the reasoning on the decisive third point which seems sound to a majority of the court. The registrant, claiming to be both a minister of religion and a conscientious objector, appealed to his district board from his local board's order placing him in class 1-A. On that appeal, in accordance with established procedure, the file was referred to the Department of Justice for advisory opinion. Honorable Curtis Bok, sitting as hearing officer for the Eastern District of Pennsylvania, then heard the registrant and filed his report and recommendation expressing his strong and complete conviction that the young man was sincere and was entitled at least to a conscientious objector classification. The Department of Justice so recommended and the [fol. 68] five member district board by unanimous vote so decided, classifying the registrant 1-O.

Thereafter, the registrant, still believing that he was entitled to the additional exemption of a minister, caused the director of Selective Service to appeal the 1-O conscientious objector classification, thus placing the whole matter before the National Appeal Board for reconsideration. That board, by a two to one vote, without stating any reason, and apparently without any additional evidence, not only denied the ministerial classification but revoked the conscientious objector classification and placed the registrant in class 1-A.

Thus, the present attack upon registrant's classification does not raise the question whether the local board had any justification for the initial 1-A classification,—and we do not suggest that it did—but rather whether the national board had any allowable basis for replacing the 1-O classification put into effect by the district board with its own 1-A classification. This distinction is important because the national board, very much like the court in this proceeding, seems merely to have reviewed the record made

below, while the district board had made its 1-O classification on the basis of new matter, a report of a *de novo* hearing before an examiner and the resulting recommendation of the Department of Justice,[2] in addition to the local board file.

Upon what did the national board predicate its decision? We can look at the record and see what the considerations must have been for and against the claim of ministerial exemption. But the record does not disclose what it was that moved the national board to change the 1-O classification to 1-A. There certainly was very obvious basis in the record for the district board's action in classifying registrant as a conscientious objector. We are left to specu- [fol. 69] late why the national board refused to accept that showing.

The Court of Appeals for the Sixth Circuit disposed of a record very much like this one by saying merely that, since there was no evidence contradicting the registrant's claim or inconsistent with his actual classification as a conscientious objector, and the national board acted merely on the file without taking testimony, the reclassification from 1-O to 1-A "was arbitrary and capricious, and without basis in fact." *Jewell* v. *United States*, 6 Cir. 1953, 208 F. 2d 770; *cf. United States* v. *Alvies*, N. D. Cal. 1953, 112 F. Supp. 618. Even more recently the Court of Appeals for the Fourth Circuit has disposed of such a record by saying "An examination of the file shows that there is nothing therein contradictory of the facts stated in the . . . [report and] recommendation [of the Department of Justice] and nothing upon which appellant could be denied his claim of exemption as a conscientious objector. The order giving him the classification 1-A, having no support in the record, is therefore void." *Pine* v. *United States*, No. 6720, decided April 5, 1954. In a somewhat similar situation the Court of Appeals for the Second Circuit reversed a denial of habeas corpus and remanded the case to the district court to determine as a fact the basis upon which the conscien-

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[2] A regulation requires the Board to "consider" the report and recommendation of the Department of Justice. 32 C. F. R. § 1626.25(c).

tious objection claim had been rejected. *United States* ex rel. *Reel* v. *Badt*, 2 Cir. 1944, 141 F. 2d 845.

In the case last cited the court indicated that such agencies as these boards should make their processes "sufficiently explicit to reveal so far as may be reasonably practicable, whether or not they are keeping within the statute under which they purport to act." 141 F. 2d at 848. Of course such disclosure need not be technical or elaborate. And it is not necessary at all in the usual case where the issue in controversy and the basis of decision are made apparent by the record itself. But in cases like the one now before us, the reclassifying board should indicate in a general and non-technical way it changed the classification.

[fol. 70] However, we are reluctant to reverse on this procedural deficiency, if there is any satisfactory way of reaching the merits of the case. For that reason we have searched the record for possible bases of reclassification, though none has been made explicit or even inferentially clear. We find just two possibilities. The board may have thought that as a matter of law the showing made did not meet the statutory requirements for classification as a conscientious objector.[3] Or it may have disbelieved the registrant's testimony as to his convictions about participation in war.

We are inclined to believe that the national board proceeded on the first ground, taking the position that as a matter of law Jehovah's Witnesses are not conscientious objectors. This impression is based in large part upon the fact that in recent months Courts of Appeal have had to consider a whole series of rather similar cases where unexplained orders of the national board changing the classification of Jehovah's Witnesses from 1-O to 1-A make sense only if they represent a consistent administrative application of this understandable, if mistaken, legal theory. *Pine* v. *United States*, 4 Cir. 1954, *supra*; *Jewell* v. *United States*, 6 Cir. 1953, *supra*; *United States* v. *Hartman*, 2 Cir.

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[3] Section 6(j) of the Universal Military Training and Service Act exempts from combatant training and service a registrant "who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form." 50 U. S. C. App. § 456(j).

1954, 209 F. 2d 366; *cf. Taffs* v. *United States*, 8 Cir. 1953, 208 F. 2d 329, *cert. den.* 1954, 347 U. S. 928. Indeed, the government urged this legal point in its brief on the present appeal. It was pointed out that the registrant as one of Jehovah's Witnesses predicates his opposition to war on the tenets of the Watchtower Bible and Tract Society. Admittedly, that religious organization disapproves international war but sanctions "theocratic war." Hence, it was contended that Jehovah's Witnesses are not taught opposition "to participation in war in any form." But on oral argument in this case that contention was abandoned [fol. 71] in the light of impressive decisions against the government on the very point since Hagaman's conviction. *Taffs* v. *United States, supra; United States* v. *Hartman, supra.* Thus, it is now conceded that the national board was wrong if it reclassified the registrant on the theory that his professed creed would not sustain a claim of conscientious objection to war.

But what if, apart from this legal question, the national board did not believe the registrant was sincere in his professions? Was the national board entitled, on the paper record alone, thus to discredit and reject the registrant's proof which had been so convincing to the hearing officer and the district board? *Jewell* v. *United States, supra,* and *Pine* v. *United States, supra,* both strike down such action as arbitrary. But here the government argues that such disbelief of the registrant might properly have been based on the fact that this young man, one of whose parents was a Jehovah's Witness, had not himself embraced that faith until he was seventeen years old at a time just three months before he registered for Selective Service. However, such rejection of testimony would have reflected the antithesis of the normal and proper unwillingness of a reviewing agency, which has not heard a witness, to reverse a judgment as to his credibility. Beyond that, it is a striking example of the very type of refusal to credit the evidence on the basis of suspicion and speculation, no conflict appearing on the face of the record, which the Supreme Court disapproved very recently in *Dickinson* v. *United States*, 1953, 346 U.S. 389. It does not matter whether we accept the statement of the majority in the *Dickinson* case, that "... the courts may properly insist that there be some proof

that is incompatible with the registrant's proof of exemption," or the complaint of the dissenters, that "Under today's decision, it is not sufficient that the Board disbelieve the registrant. The board must find and record affirmative evidence that he has misrepresented his case . . ." 346 U. S. at 396, 399. Under either formulation we would have to [fol. 72] assume that the national board here did just what the Supreme Court disapproved, and, different from the *Dickinson* case, in the face of the strong contrary conviction of the district board as well as the hearing officer before whom the registrant had appeared. In these circumstances, the classification cannot stand on the possibility that the national board was unwilling to credit the registrant's testimony as to conscientious objection to participation in war.

In *United States* ex rel. *Reel* v. *Badt, supra,* the Court of Appeals for the Second Circuit sent the case back to the district court for a further hearing because on the record it could only speculate whether the classification was made on a lawful or an unlawful basis. Here, we are satisfied that neither of the possible bases was proper. The 1-O classification was changed to 1-A either on a theory which the government now concedes to be legally wrong, or by an arbitrary decision on the facts. The reclassification was invalid and induction could not lawfully be required.

The judgment will be reversed.

GOODRICH, Circuit Judge, dissenting in part.

While this opinion is termed a dissent, the first two points discussed represent the opinion of all the members of the Court. They are: (1) Procedural due process; (2) The refusal to classify Hagaman as a minister of religion. The dissent by the minority comes upon the conscientious objector point discussed in Judge Hastie's opinion, which is joined in by enough of his colleagues to constitute a majority of the Court.

We turn to the procedural point first. Hagaman says he was denied procedural due process. After the filing of his questionnaire he received from his local Board a classification of 1-A. He requested a personal interview, to which

[fol. 73] he was entitled under the regulations.[1] He had a personal interview. The Board heard him fully. Then he was told orally that his classification would not be changed and that he could appeal.[2] He did appeal; in fact his appeal went to the highest administrative authority, the National Selective Service Appeal Board.

The basis for Hagaman's complaint is that the local Board did not formally "reclassify" him after the personal interview as the regulations require. It is true that the regulations at the time of the events here did provide both for a formal reclassification and notification by mail.[3] It is also true that courts of appeals have reversed convictions

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[1] "*Opportunity to appear in person.* (a) Every registrant, after his classification is determined by the local board . . . shall have an opportunity to appear in person before the member or members of the local board designated for the purpose if he files a written request therefor within 10 days after the local board has mailed a Notice of Classification (SSS Form No. 110) to him." 32 Code Fed. Regs. § 1624.1 (1949). Substantially the same provision appears in the present regulation, 32 Code Fed. Regs. § 1624.1(a) (1951).

[2] The Board's minutes state: "Registrant told he would remain 1-A and case not reopened." On the same day as this hearing, the Board for the second time sent Hagaman a Notice of Classification as 1-A.

[3] "(c) After the registrant has appeared before the member or members of the local board designated for the purpose, the local board shall consider the new information which it receives and shall again classify the registrant in the same manner as if he had never before been classified.

"(d) After the registrant has appeared before the member or members of the local board designated for the purpose, the local board, as soon as practicable after it again classifies the registrant, shall mail notice thereof on Notice of Classification (SSS Form No. 110) to the registrant and on Classification Advice (SSS Form No. 111) to the persons entitled to receive such notice or advice on an original classification under the provisions of section 1623.4 of this chapter." 32 Code Fed. Regs. § 1624.2 (1949).

of registrants when their rights were prejudiced by failure of notification. *United States* v. *Stiles*, 169 F. 2d 455 (C.A. 3, 1948), explaining *United States* v. *Zieber*, 161 F. 2d 90 (C.A. 3, 1947); *United States* v. *Fry*, 203 F. 2d 628 (C.A. 2, 1953).

It is one thing, however, to protect a man when he is prejudiced by the failure of administrative authorities to observe the precautions taken to guard his rights. It is an- [fol. 74] other thing to create an administrative procedure, designed to be handled by volunteer laymen in communities throughout the nation, as technical and ritualistic as common law pleadings. We have said in an earlier opinion that a registrant is not obliged to make his points with his draft board in the fashion required of a well-trained lawyer, *United States* ex rel. *Berman* v. *Craig*, 207 F. 2d 888 (C.A. 3, 1953). It is likewise true that the board's proceedings do not need to be recorded with the meticulous accuracy with which an experienced corporation counsel draws a set of corporate minutes.

The present case is like *Martin* v. *United States*, 190 F. 2d 775 (C.A. 4, 1951), followed in *Atkins* v. *United States*, 204 F. 2d 269 (C.A. 10, 1953) in which the court refused to "quibble over terminology."

The course of decision on this matter has been a commendable one. If a registrant has been denied a chance to exercise rights given him under the statute and regulations his conviction has been reversed, as in the *Zieber*, *Stiles*, and *Fry* cases, cited above. On the other hand, as in the *Martin* and *Atkins* cases, where there has been substantial compliance, so that a man has had all the consideration due him, the courts have refused to reverse for mere technical irregularities. That, we believe, works substantial justice.[4]

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[4] Under the present regulations, the board need not reclassify the registrant in the absence of new information justifying such a change. "(c) After the registrant has appeared before the member or members of the local board designated for the purpose, the local board shall consider the new information which it receives and, if the local board determines that such new information justifies a change in the registrant's classification, the local board shall reopen

We pass, therefore, to appellant's complaint that there is no support in the record for the classification given him. Since *Estep* v. *United States*, 327 U.S. 114 (1946), we are bound to make this inquiry, and if there is no basis in fact [fol. 75] for the classification we must reverse the conviction. *Dickinson* v. *United States*, 346 U.S. 389 (1953); *Annett* v. *United States*, 205 F. 2d 689 (C.A. 10, 1953); *United States* v. *Pekarski*, 207 F. 2d 930 (C.A. 2, 1953); *Taffs* v. *United States*, 208 F. 2d 329 (C.A. 8, 1953), cert. denied, 347 U.S. 928 (1954); *Schuman* v. *United States*, 208 F. 2d 801 (C.A. 9, 1953); *Jewell* v. *United States*, 208 F. 2d 770 (C.A. 6, 1953); *United States* v. *Hartman*, 209 F. 2d 366 (C.A. 2, 1954); *United States* v. *Kobil* (E.D. Mich. 1951) (unreported); Ex parte *Fabiani*, 105 F. Supp. 139 (E.D. Pa. 1952); *United States* v. *Graham*, 109 F. Supp. 377 (W.D. Ky. 1952); *United States* v. *Alvics*, 112 F. Supp. 618 (N.D. Cal. 1953); *United States* v. *Loupe* (D.N.J. 1953) (unreported); *United States* v. *Burnett*, 115 F. Supp. 141 (W.D. Mo. 1953); *United States* v. *Lowman*, 117 F. Supp. 595 (W.D.N.Y. 1954); *United States* v. *Benzing*, 117 F. Supp. 598 (W.D.N.Y. 1954).

We start then with the task "to search the record for some affirmative evidence to support the local board's overt or implicit finding that a registrant has not painted a complete or accurate picture of his activities." *Dickinson* v. *United States*, *supra*, at 396.

We consider first the matter of Hagaman's claim to be classified as a minister of religion and, therefore, exempt from the draft under 50 U.S.C.A. App. §456(g). It is settled that merely because he belongs to the body known as Jehovah's Witnesses, all of whose members claim to be ministers to preach the gospel to all the nations, he does not thereby become entitled to the ministerial exemption under the statute and regulations. *Dickinson* v. *United States*,

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and classify the registrant anew. If the local board determines that such new information does not justify a change in the registrant's classification, it shall not reopen the registrant's classification." 32 Code Fed. Regs. §1624.2 (1951). However, the notification requirement remains the same. See 32 Code Fed. Regs, § 1624.2(d).

supra, at 394; *Cox* v. *United States*, 332 U.S. 442, 449-450 (1947). The ministerial exemption is a narrow one and [fol. 76] has been rather fully described in the statute.[5] The burden is on the registrant to show that he comes within it. *Dickinson* v. *United States*, *supra* at 395.

The administrative authorities were justified in finding that Hagaman did not so qualify. It is true that he was baptized at the age of eighteen in to the "ministry" of this sect. And he claims to have been a minister from June, 1948, when he joined Jehovah's Witnesses. Of course, this

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[5] "(1) The term 'duly ordained minister of religion' means a person who has been ordained, in accordance with the ceremonial, ritual, or discipline of a church, religious sect, or organization established on the basis of a community of faith and belief, doctrines and practices of a religious character, to preach and to teach the doctrines of such church, sect, or organization and to administer the rites and ceremonies thereof in public worship, and who as his regular and customary vocation preaches and teaches the principles of religion and administers ordinances of public worship as embodied in the creed or principles of such church, sect, or organization.

"(2) The term 'regular minister of religion' means one who as his customary vocation preaches and teaches the principles of religion of a church, a religious sect, or organization of which he is a member, without having been formally ordained as a minister of religion, and who is recognized by such church, sect, or organization as a regular minister.

"(3) The term 'regular or duly ordained minister of religion' does not include a person who irregularly or incidently preaches and teaches the principles of religion of a church, religious sect, or organization and does not include any person who may have been duly ordained a minister in accordance with the cremonial rite, or discipline of a church, religious sect or organization, but who does not regularly, as a vocation, teach and preach the principles of religion and administer the ordinances of public worship as embodied in the creed or principles of his church, sect, or organization." 50 U.S.C.A. App. § 466(g).

is simply the claim all members make and, as said above, we must go further to find that he was a minister in the statutory sense. If, as pointed out in the *Dickinson* case, the flock is not to be left without a shepherd, it is equally true that the flock cannot consist of shepherds only.

When Hagaman was asked in the special form for conscientious objectors to name "the pastor or leader of such church, congregation, or meeting" he answered that it was one P. L. Talarico, who was the "company servant" for [fol. 77] this particular group in Fort Lauderdale, Florida.[6] Hagaman shows some evidence of preaching activities, but those instances are only seven in number at most.[7] It is true that Mr. Talarico, the company servant in Fort Lauderdale, wrote a letter in which he said he considered Hagaman "a regular minister of religion." He followed that statement by saying he "would not hesitate to assign him any of the duties regularly and customarily performed by an ordained minister," such as "conducting Bible studies, baptismal services, funeral discourses, marriage ceremonies," and so on. But "not hesitate to assign" is not the same as being assigned and carrying on these duties. There is evidence, undoubtedly, that Hagaman did engage in some religious activity, which he, himself, described as similar to

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[6] In the *Dickinson* case, supra, defendant was the "company servant" for Coalinga, California, and proved extensive preaching activities. We do not mean to indicate that only those Witnesses who are "company servants" can be exempted as ministers. See *Cox* v. *United States, supra*, at 449-450.

[7] In connection with one of those instances, there is an unexplained inconsistency, the significance of which we are perhaps not required to pass on. In the Board's file, which is in evidence, there is a photostat of a letter, dated May 2, 1951, from a man named Bruce E. Griffin in which he asked Hagaman to take his place in giving a discourse on Sunday, May 27, 1951. A circular announcement of the discourse accompanies the letter. But the postmark upon the photostat of the envelope attached thereto bears date June 3. The claim for deferred classification had been made in March, 1951.

that done by deacons in other denominations.[8] Everybody knows that a great deal of church work in every demonination is done by persons who devote themselves without compensation to the task. We know, too, that in many denominations laymen frequently make religious talks without thereby achieving in their own or anyone's mind any "ministerial status."

This case presents a problem of deciding on which side of the line Hagaman's activities fell. There were some things to indicate employment in a ministerial capacity. There were others to indicate that he had not reached in the serv- [fol. 78] ice of Jehovah's Witnesses the place where he could be called a "ministe." in the sense in which that term is used by the United States, however it may be used by Jehovah's Witnesses. That being the case, the decision is for the administrative authorities. *Estep* v. *United States*, *supra*, at 122.

We now come to the point on which the Court divides. We do not disagree with the majority here and the judges in other circuits who have refused to reject all Jehovah's Witnesses from the conscientious objector category because of the "theocratic warfare" point. But we do not see any basis for assuming that Hagaman's classification as a conscientious objector was made because of Jehovah's Witnesses' adherence to the doctrine of "theocratic warfare," whatever that may mean.

The conscientious objector claim, it may be agreed, is the most difficult point in the case. If, as the majority in the *Dickinson* case says, the draft boards are now to be obliged to build a record, we still have the question of how much of a record it is going to take to support their conclusions. Decisions have said that mere suspicion is not enough, *Dickinson* v. *United States*, *supra*, at 397; *Schuman* v. *United States*, 208 F. 2d 801 (C.A. 9, 1953). On the other

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[8] Hagaman was admitted several weeks before he filled out his questionnaire to the group called "pioneers." Pioneers, as we understand it, are not "company servants" but are a step up in ranks of the hierarchy from ordinary members. They are obliged to perform 100 hours a month in the group service. Hagaman's comparison to the work done by the deacons in other denominations seems to us quite apt.

hand we do not suppose that the courts are going to require draft boards to go out and make investigations in the community and bring into their hearings witnesses to oppose claims for classification made by registrants. If they must do so, the administration of selective service laws will become a much more highly complicated process than it now is.

The question in this case, we think, should turn upon the administrative body's conclusion as to the sincerity of Hagaman's claim to be a conscientious objector. He did not have the same family background of membership in Jehovah's Witnesses that many others have had whose claims for conscientious objector classifications have come [fol. 79] into litigation.[2] One parent was a Jehovah's Witness; the other was a Lutheran. The parents did not live together. The boy spent part of his time with each. When he was sixteen he entered the John B. Stetson University in Deland, Florida, a Baptist institution. In the document filled out at the time of his registration there in 1946 he gave his religious preference as Lutheran. He had two years of a Business Administration course at Stetson. He registered for the draft in September, 1948. He had joined Jehovah's Witnesses just three months before that.

People do change their religious views, of course, and there is no disposition on our part to deny the sincerity of a Road to Damascas conversion. On the other hand when such conversion comes a very short time before one may become liable for military service, the question is suggested whether the conversion is a real or pretended one. That obviously, is a question of fact. The question of fact was passed upon by the local Board in the first instance unfavorably to the registrant. That body not only had the registrant's papers before it, but also had the benefit of hearing and seeing him in a personal interview. The hearing officer on appeal believed in Hagaman's sincerity after seeing him and that appeal sustained the conscientious objector classification though denying the ministerial exemption. The final appeal restored the 1-A classification which the local Board had given.

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[2] As for instance in *Pine* v. *United States*, cited in the majority opinion.

When trial courts pass upon a question of fact, courts of appeals are to accept their conclusions unless clearly erroneous. When the question of fact is whether a given witness or litigant is telling the truth, it takes a very strong set of circumstances to prevail against the conclusion reached by the fact finder. Surely our supervision over the fact finders in the selective service process is not greater than that over trial courts. Legal questions, of course, we decide as we have in the first part of this opinion. And [fol. 80] ultimate conclusions from evidentiary facts we can also pass upon to some extent. That is what we think the Supreme Court did in the *Dickinson* case, which dealt with the fact material out of which the claim for ministerial exemption arose. That is what we have done in the portion of this opinion dealing with the claim for exemption as minister. But when the question turns on a man's motives, review of the factual determination is a different thing. Two of the three bodies who have had Hagaman's case before them have ruled against his contention. We believe the factual conclusion should stand.

A suggestion from judicial sources that boards of appeals file reasons for conclusions is one which would make judicial review easier of course. "Opinions are required in our legal system in order that the reasoning which justifies a conclusion may be made manifest." Frankfurter, J., dissenting in *Darr* v. *Buford,* 339 U.S. 200, 225 (1950). But the Congress, in setting up draft boards and the various boards of appeals, did not require findings of fact, conclusions of law or opinions. We do not think that judges are authorized to impose such a requirement.

All of us think that the judgment of the district court should be affirmed on the first two points stated above. But the majority overrules us on the point of the conscientious objector classification.

Judges McLaughlin and Staley join in the dissenting portion of this opinion.

[fol. 81] SUPREME COURT OF THE UNITED STATES—October Term, 1954

No. 164

PHILIP ANDREW WITMER, PETITIONER

vs.

UNITED STATES OF AMERICA

ORDER ALLOWING CERTIORARI—Filed October 14, 1954.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(8443)